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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,404	09/21/2005	Les Teichner	018044.01US2	2285
25541 7590 04/01/2010 PATENT ADMINISTRATOR NEAL, GERBER, & EISENBERG SUITE 1700 2 NORTH LASALLE STREET CHICAGO, IL 60602				
EXAMINER HOLLOWAY, JASON R				
ART UNIT 3633		PAPER NUMBER		
NOTIFICATION DATE 04/01/2010		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@ngelaw.com

# Office Action Summary

**Application No.**

10/550,404

**Applicant(s)**

TEICHNER ET AL.

**Examiner**

JASON HOLLOWAY

**Art Unit**

3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The previous specification and claim objections are withdrawn in light of Applicant's amendments. The drawing rejections still stand as stated below, with an additional drawing objection requiring further clarification of the invention. Note the drawing objections regarding handwritten labels and color photographs still stand. The applicant has noted in the remarks page 11 that formal drawings will be submitted upon an indication of allowable subject matter.

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because the drawings only show the mounting bracket and gutter cover individually. Showing the bracket and covered when they are in their installed condition is vital to the understanding and clear disclosure of the invention and should be included in the drawings. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).
2. Further, the drawings are objected to because many of the handwritten labels are difficult to read and the drawing figures appear grainy. The examiner recommends clear drawings be submitted.
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure

number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted (See Figure 23). Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 26-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 26 and 36, it is unclear how the open end is positioned vertically below the closed end. This language implies the open end is directly below the closed end, but this is clearly not the case of the coupling member in applicants figure 4. The examiner will examine the claim under the assumption that the closed end is higher than the open end in a way that allows drainage and prevents the pooling of debris or water.

Further regarding claims 26 and 36, the recitation "opens downwardly similar to said male coupling member" is indefinite because it is unclear what limitations are encompassed by "similar." The examiner will examine the claim under the assumption the female coupling member opens downwardly.

Regarding claims 27 and 37, it is unclear what is being referred to as "sidewalls" in the mounting bracket. The term sidewalls implies flat walls disposed at the sides of the structure, but as clearly illustrated in figure 9, sidewalls are not present. The examiner will examine the claim under the assumption that members 110 and 112 are the "sidewalls."

Further regarding claims 27 and 37, it is unclear how the open end is positioned vertically below the closed end. This language implies the open end is directly below the closed end, but this is clearly not the case of the coupling member in applicants

figure 9. The examiner will examine the claim under the assumption that the closed end is higher than the open end in a way that allows drainage and prevents the pooling of debris or water within the bracket.

Regarding claims 28 and 38, it is unclear how the lip portion is purported to be step-shaped. Steps are generally comprised of flat sections opposed perpendicularly to one another, while the lip of the applicant's cover is a continuous curve and does not appear to be in the shape of steps. It is also unclear how the fold in the gutter cover can be perpendicular with the curved surface of the continuously curved lip portion. The examiner will examine the claim under the assumption that the generally vertical section of the fold is perpendicular to the flat section of the cover which leads to the lip of the cover.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 26 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albracht (6,701,674) in view of Albracht (6,098,344).

**Regarding claims 26 and 36,** Albracht teaches a rain gutter system for buildings, comprising:

a conventional rain gutter having a generally trough-shaped interior (gutter 190 of figure 1), a rear wall extending along a roof fascia (197), a bottom wall and a front lip;  
and

a gutter guard (101) capable of deflecting debris from said interior of said gutter, including:

an elongate gutter cover having a back section extending along an associated roof (in figure 1 this corresponds to 107), a middle section (at 101 arrow of figure 1) extending over said interior of said gutter, and a front section extending adjacent (109) to said front lip of said gutter (as illustrated in figure 1);

said middle section of said gutter cover having an integrally formed, longitudinally extending, doubled-over fold which projects generally horizontally toward said back section of said gutter cover (the doubled over fold 112 of the embodiment of figure 8e as applied to the same feature 112 in figure 1 projects generally horizontally toward the back of the gutter cover) to define a male coupling member that opens downwardly and has a closed end and an open end (as clearly illustrated in figure 8E, 112 opens downwardly and has a closed end); and

a mounting bracket (150 of figure 1) operably connected with said gutter and having an intermediate portion (153 of figure 1) supporting said middle section of said gutter cover thereon to deflect debris from said interior of said gutter, and a forward portion (at 172) supporting said front section of said gutter cover along said front lip of said gutter;

said intermediate portion (153) of said mounting bracket having a coupling slot opening generally horizontally toward said front section of said mounting bracket (the examiner construes it would be obvious when using the embodiment of figure 8e to have a coupling slot in the mounting bracket which opens generally horizontally toward the front section to match that of the projection 112) to define a female coupling member that opens downwardly (as illustrated in figure the coupling at 166 and 153 opens in a downward direction) in which said male coupling member of said gutter cover is closely received and retained to securely mount said gutter cover on said mounting bracket without separate fasteners (as illustrated in figure 1, 112 is retained in a female coupling member).

However, Albracht '674 fails to explicitly disclose the open end of the coupling member is positioned below the closed end. Albracht '344 teaches a gutter cover (at K of figure 1) wherein an open end of the folded over component at label GPS is clearly positioned below the closed end due to the downward sloping doubled over segment just as applicants member 58 of figure 4.

Therefore, from the teaching of Albracht '344, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cover member of Albracht '674 to include a coupling section which has the configuration similar to that of Albracht '344 in order to prevent water or debris from pooling in the section 112.



***Allowable Subject Matter***

9. Claims 27-35 and 37-45 are objected to as being dependent upon a rejected base claim, but it appears would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and rewritten to overcome the 35 USC 112 Rejections set forth in this action.
10. The following is a statement of reasons for the indication of allowable subject matter: Although subject to further review after the 35 USC 112 rejections are overcome, the prior art of record does not appear to teach a combination of all the limitations of the gutter system of claims 26 and 36 along with the newly added limitation in claims 27 and 37 of providing a mounting bracket having a coupling member having a downward opening and a closed end which is positioned higher than the open end. Any combination of references to teach this limitation would appear to destroy the purpose and fundamental purpose of the mounting bracket 150 of Albracht '674.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached 892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HOLLOWAY whose telephone number is (571) 270-5786. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on 571-272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JASON HOLLOWAY  
Examiner  
Art Unit 3633

JH

/Brian E. Glessner/  
Primary Examiner, Art Unit 3633